

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: NPC INTERNATIONAL, INC., <i>et al.</i> Debtors.¹	§ § § § § §	Chapter 11 Case No. 20-33353 (DRJ)
---	----------------------------	---

**LIMITED RESPONSE OF JACOB ROE TO THE JOINT MOTION OF
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE DEBTOR
TO ESTABLISH ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR
THE RESOLUTION OF LITIGATION CLAIMS**

Jacob Roe (“Mr. Roe”), by and through undersigned counsel, files his response in limited opposition (this “Response”) to the Joint Motion of the Official Committee of Unsecured Creditors and the Debtor to Establish Alternative Dispute Resolution Procedures for the Resolution of Litigation Claims (the “Motion”) [ECF No. 1577]. In support of this Response, Mr. Roe says:

RELEVANT BACKGROUND

1. On or about June 10, 2018, in the course of her employment, Jessica Ward, an employee of a Pizza Hut franchise operated by NPC International, Inc. (“NPC” or “Debtor”), one of the Debtors in the above-referenced bankruptcy cases (the “Bankruptcy Cases”), struck Mr. Roe with a motor vehicle.

2. On July 1, 2019, Mr. Roe initiated a state court action (the “State Court Action”). In the State Court Action, Mr. Roe asserted various negligence claims which resulted in significant bodily injuries.

3. The trial in the State Court Action was set to begin on October 5, 2020.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are NPC International, Inc. (7298); NPC Restaurant Holdings I LLC (0595); NPC Restaurant Holdings II LLC (0595); NPC Holdings, Inc. (6451); NPC International Holdings, LLC; (8234); NPC Restaurant Holdings, LLC (9045); NPC Operating Company B, Inc. (6498); and NPC Quality Burgers, Inc. (6457). The Debtors’ corporate headquarters and service address is 4200 W. 115th Street, Suite 200, Leawood, KS 66211.

4. The Debtors are named insureds under the Republic – Vanguard Insurance Policy (the “Policy”). The Policy contains the Self-Insured Retention and Corridor Self-Insured Retention Endorsement, which provides that the Debtors are self-insured in the amount of \$1 million per accident.

5. On July 1, 2020 (the “Petition Date”), NPC and its affiliates (collectively, the “Debtors”) each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”).[ECF No.1]. The Bankruptcy Cases are jointly administered under Case No: 20-33353 (DRJ).

6. On July 6, 2020, a Notice of Bankruptcy and Imposition of Automatic Stay pursuant to § 362(a) of the Bankruptcy Code was filed in the State Court Action.

7. On August 24, 2020 Mr. Roe filed a Motion for Relief from Automatic Stay pursuant to 11 U.S.C. § 362(d)(1) (the “Motion for Relief from Stay”) [ECF No. 500].

8. On January 29, 2021, Bankruptcy Court entered an Order confirming the Debtors’ Second Amended Joint Chapter 11 Plan (the “Confirmation Order”) [ECF No. 1528].

9. On March 1, 2021, Debtors filed the Motion, which seeks approval of certain procedures for the post-confirmation resolution of litigation claims identified in Exhibit B to the Motion (the “ADR Procedures”), including Mr. Roe’s claims in the State Court Action.

10. Mr. Roe’s Stay Relief Motion remains pending.

LIMITED RESPONSE

11. While Mr. Roe has had productive conversations with Committee counsel and Debtors’ counsel, Mr. Roe objects to approval of the ADR Procedures on a limited basis, for the following five reasons.

12. **First**, the ADR Procedures should be amended to provide (i) a cure period for failure to timely respond to any notice, and (ii) a mechanism to allow litigant parties to request service by electronic mail. The ADR Procedures require the GUC Trust² to mail the ADR Notice, which may also include an Immediate Claim Settlement Offer to allow a claim in the amount asserted by the claimant, or to allow the claim in a different amount as determined by the GUC Trust. The ADR Procedures, however, “require the Claimant to respond to the ADR Notice so that *it is received by the GUC Trust no later than 21 days* after the mailing of the ADR Notice. *See* ECF No. 1577, Exh. B, § IV(A)(1) (emphasis added).

13. Failure to sign and timely return the ADR Notice “shall result in the Claimant being *deemed to have accepted* the Immediate Claim Settlement Offer and to have agreed and consented to the proposed treatment of the Litigation Claim as set forth in the Immediate Claim Settlement Offer, and the Litigation Claim shall be allowed in the amount and classification of the Immediate Claim Settlement Offer without any further action by the parties or the Bankruptcy Court.” *See id.* (emphasis added).

14. Thereafter, the GUC Trust will mail an acceptance notice to Claimants who fail to timely sign and return an Immediate Claim Settlement Offer. Claimants are only afforded 10 days from service of the acceptance notice to object to the deemed acceptance of their Immediate Claim Settlement Offer. Claimants may object “*solely on the grounds of excusable neglect* for failure to timely return the Immediate Claim Settlement Offer.” *See id.* (emphasis added).

15. The ADR Procedures’ requirement that ADR Notices are received no later than 21 days after they are mailed is unreasonable in light of COVID-19, which has produced unprecedented delays in mail delivery. *See* Quinn Klinefelter, *There's No End In Sight: Mail*

² Unless otherwise noted, capitalized terms in this Limited Response section shall have the meanings given in the Motion.

Delivery Delays Continue Across The Country, npr, (Jan. 22, 2021), <https://www.npr.org>., attached hereto and incorporated herein as **Exhibit A**. A delay in delivery, however, may lead to harsh and final penalties for Claimants. As noted, Claimants are deemed to have automatically accepted the Immediate Claim Settlement Offer and to have consented to the proposed treatment of their claims. Thereafter, Claimants are only allowed a 10 day objection period on severely limited grounds.

16. To remedy these draconian penalties, Mr. Roe requests (i) a cure period for failing to respond, for any reason, and (ii) the right to request electronic mail service of all notices required under the ADR Procedures.

17. **Second**, the ADR Procedures “require the competition of the Offer and Exchange Procedures and Mediation Procedure as a prerequisite for a Claimant to obtain relief from the Plan Injunction.” *See* ECF No. 1577, Exh. B, § IV(C)(1). In the event a claim has not been liquidated and allowed upon completion of the offer and exchange procedures and the mediation procedures, the only remedy available to Claimants is “the right to file a motion with the Bankruptcy Court” for relief from the Plan Injunction. *See* ECF. No. 1577, Exh. B, § IV(C)(1)(a).

18. In the event of a mediation impasse, despite the Stay Relief Motion having been filed in October 2020, likely for more than a year by the time of impasse, Mr. Roe will be required to return again to the Bankruptcy Court, this time to seek relief from the Plan Injunction. The ADR Procedures are intended to facilitate the efficient resolution of claims, a requirement to continue litigation in Bankruptcy Court is costly, dilatory, and unduly burdensome on Claimants, and obviates the entire purpose of the ADR Procedures.

19. To remedy this infirmity, Mr. Roe requests that the ADR Procedures be amended to provide that, after five business days following an impasse at mediation, the Plan Injunction shall be deemed lifted as to a Claimant’s claims, such that the Claimant may pursue its claims as

appropriate upon expiration of the five-day period, except that the GUC Trust may request the continued imposition of the Plan Injunction upon a showing of bad faith participation in the mediation process by the Claimant.

20. **Third**, the ADR Procedures require that at “the conclusion of the Mediation or the final adjournment...the parties sign a written report before the mediator.” *See* ECF No. 1577, Exh. B, § IV(B)(8).

21. Because the ADR Procedures permit virtual mediation, electronic signing of the Mediation Report should likewise be permitted. *See* ECF No. 1577, Exh. B, § IV(B)(8).

22. **Fourth**, the ADR Procedures require responses to the GUC Trust’s request for additional information from a claimant be “received by the GUC Trust within 14 days of such request.” *See* ECF No. 1577, Exh. B, § IV(A)(2)(d).

23. Certain information may not be available for production within fourteen days (or at all, in limited circumstances). As such, this requirement should be modified to provide for production as soon as reasonably practicable after receipt of a request, and only to the extent the requested material is available.

24. **Fifth**, the Immediate Claim Allowance Offer form does not allow a claimant to reject an offer. *See* ECF No. 1577, Exh. B, Annexed Exh. B.

25. Under the ADR Procedures, failure to sign and return the Immediate Claim Settlement Offer form results in the Claimant being deemed to have accepted the offer. *See* ECF No. 1577, Exh. B, § IV(A)(1)(a).

26. Therefore, the Immediate Claim Allowance Offer form should be amended to include an option for a claimant to reject the offer.

CONCLUSION

For the foregoing reasons, Mr. Roe respectfully requests the Court modify the ADR Procedures as set forth above, and grant such other and further relief as the Court deems just and proper.

Dated: March 22, 2021

Respectfully submitted,

AKERMAN LLP

/s/ David W. Parham

David W. Parham

Texas SBN: 15459500

AKERMAN LLP

2001 Ross Avenue, Suite 3600

Dallas, Texas 75201

Telephone: (214) 720-4300

Facsimile: (214) 981-9339

david.parham@akerman.com

and

Jacob A. Brown (Admitted *Pro Hac Vice*)

50 North Laura Street, Suite 3100

Jacksonville, Florida 32202

Telephone: (904) 798-3700

Facsimile: (904) 798-3730

jacob.brown@akerman.com

Attorneys for Jacob Roe

Exhibit A

The Coronavirus Crisis

'There's No End In Sight': Mail Delivery Delays Continue Across The Country

January 22, 2021 • 7:01 PM ET

QUINN KLINEFELTER

FROM [wdet 101.9 fm](#)

3-Minute Listen

[Download](#)



Case 20-3353 Document 16-2 Filed 03/22/21 Page 9 of 14

A U.S. postal worker closes a mailbox and letters in Chicago's Hyde Park neighborhood shortly before Christmas. The U.S. Postal Service said it faces "unprecedented volume increases and limited employee availability due to the impacts of COVID-19."

Charles Rex Arbogast/AP

You've got mail. Somewhere. Probably.

The U.S. Postal Service is still digging out from under an avalanche of mail sent during the recent holiday season.

But for much of the past year the postal system has been strained by the impact of COVID-19 on its workflow and workforce.

In addition, operational changes ostensibly designed to stop the system from hemorrhaging money helped create a backlog of mail.

And the head of the Postal Service pledges that more changes in the name of cost savings are coming soon.

Online shopping has skyrocketed during the pandemic as many customers sheltered at home.

Both the Postal Service and those who depend on timely mail deliveries are still coping with the result.

In cities such as St. Louis, postal workers are putting in 12-hour days and pulling extra shifts to make a dent in mountains of letters and parcels.

In Baltimore, utility customers are receiving bills in the mail that are already past due.

And outside the main post office in Detroit, Lucy Johnson says lost letters that should have arrived at their destination long ago are putting her house at risk.

Article continues after sponsor message

"I got a bill back, my mortgage payment, and it said it was late last month," Johnson

Seems like the bills come on time, but when you mail them out, they don't get there on time. What's going on?"



NATIONAL

Millions Of Christmas Gifts May Arrive Late Due To Overload At The Postal Service

The perfect postal storm

The U.S. Postal Service has an answer at the very top of its official tracking page.

A disclaimer there notes the system is "experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19."

That combination is making it tough on those at the other end of the mailbox.

“

So any given day we're six to 12 carriers short out of 60 routes. So there is days that it just can't get done.

American Postal Workers Union official Jennifer Kowalczyk

About 20 miles north of Detroit, near the Shelby Township, Mich., post office, American Postal Workers Union official Jennifer Kowalczyk says letter carriers and mail clerks have never seen anything like the current deluge.

"They just feel like there's no end in sight. Because usually [around] Christmas there's a month or two that it's hectic, it's crazy, you're working 12 hours a day. But this has been going on since the middle of March. So you're going on almost a year. And these people are exhausted," she says.

Union officials estimate as many as 14,500 postal employees are currently under quarantine.

"So any given day we're six to 12 carriers short out of 60 routes. So there is days that it



The U.S. Postal Service is still struggling to deal with mail sent during the recent holiday season.

Quinn Klinefelter/NPR

Bottlenecks and backlogs

Groups representing some of the nation's largest bulk mailers say certain major processing hubs were so overwhelmed late last year that they were "embargoed," and refused to accept any mail for a time as they attempted to clear the bottleneck of letters and packages.

Article continues after sponsor message

Delivery trucks reportedly waited hours and sometimes even days before they could

drop off mail at facilities in regions such as metro Detroit and Philadelphia, portions of New Jersey and some Southern states, areas hit hard and early by COVID-19.

Art Sackler, who heads the Coalition for a 21st Century Postal Service, which represents some of the nation's largest companies that rely on mail delivery, says the slowdowns pose a real threat to small businesses already on the edge financially.

"Small-town newspapers that depend on the Postal Service to arrive on Saturdays, so that people have the ads that they can use on Saturday when they go for their shopping. They couldn't even drop 'em off [at some post offices]," Sackler says.

The Postal Service has long been losing money as customers increasingly turned to relying on emails and e-commerce.

When Postmaster General Louis DeJoy took over last summer, he vowed to make the service more efficient and cost-effective.

DeJoy moved to slash overtime and accelerate mothballing sorting machines.

He also required letter carriers to begin deliveries at a specific time each day and not return to a post office, even if it meant leaving some mail stranded.

“

As we begin the new year I want us to set a new tone. We will ... deliver affordable and dependable service to the American public in a self-sustaining business manner.

U.S. Postmaster General Louis DeJoy

Federal courts blocked those orders, ruling that the Postal Service had to ensure that mail-in absentee ballots arrived on time to be counted in the November U.S. elections.

By all accounts, the Postal Service made good on delivering ballots in a timely fashion.

But in a recent video to postal employees, DeJoy intimated his previous changes, as well as new initiatives to streamline the service, are coming in 2021.

He said, "As we begin the new year I want us to set a new tone. We will soon begin a

process to deliver a Postal Service of the future that will deliver affordable and dependable service to the American public in a self-sustaining business manner."

Buried under packages, ravaged by COVID-19

The postmaster general's message worries some members of the U.S. Senate Homeland Security and Governmental Affairs Committee, which oversees the Postal Service.

As the committee's ranking Democratic member last year, Sen. Gary Peters of Michigan helped investigate whether DeJoy was purposely slowing delivery in 2020 to limit mail-in ballots.

Peters says the Postal Service is just that – a service — and can't be run like a business.

"And I'm particularly concerned that the postmaster general is focused primarily just on cutting cost. Certainly cutting cost is important. But you can't do it in a way that impacts service," Peters says.

Back near the Shelby Township post office, union local President Roscoe Woods says DeJoy's procedural changes helped delay delivering letters already buried under so many packages that the facility there had to erect a tent to house the overflow.

And Woods says COVID-19 continues to ravage the postal workforce.

He says some older employees took early retirement to avoid close contact with others at postal facilities or along delivery routes, while workers with children were forced to stay home as schools remained closed to in-person learning.

Woods says efforts to modernize operations in the future can only go so far.

"However automated it may be, however streamlined you can make it, it still requires people to move the mail," Woods says. "It still requires bodies sorting, 'cause not every address can be read by a computer, not every parcel can be sorted by a machine. They can try to cut bodies, and service will suffer."

Union officials say the Postal Service is keeping on about 10,000 temporary workers

Unions say the Postal Service is also finalizing a deal to add almost 10,000 new jobs at processing plants.

But the Postal Service's total workforce is well over 600,000.

And those employees are still dealing with mail that keeps piling up as unprecedented increases in online shopping continue.

Most postal workers are next up to receive COVID-19 vaccinations.

And some union officials say the logjam of mail could ease as workers return.

But many involved with the service predict deliveries won't truly improve until the pandemic relaxes its grip on the nation.

us postal service

More Stories From NPR

